Ann's Laundry & Dry Cleaners, Inc. and Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union Local No. 2, affiliated with International Brotherhood of Teamsters. Case 17-CA-11092

21 February 1984

DECISION AND ORDER

By Chairman Dotson and Members ZIMMERMAN AND HUNTER

On 11 May 1983 Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, 1 and conclusions 2 and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Ann's Laundry & Dry Cleaners, Inc., Kansas City, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we

have violated the National Labor Relations Act, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT discharge or otherwise discriminate against employees for supporting or engaging in activities on behalf of Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union Local No. 2, affiliated with International Brotherhood of Teamsters, or any other labor organization.

WE WILL NOT interrogate employees about their union activities or the union activities of other employees.

WE WILL NOT threaten to close our facility because of our employees' union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

WE WILL offer Anner Faye Miller full and immediate reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, with full seniority, privileges, and benefits, and WE WILL make her whole for any losses she may have suffered because of our discrimination against her, plus interest.

WE WILL expunge from our files any reference to the discharge of Miller in July 1982, and WE WILL notify her in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against her.

Ann's Laundry & Dry Cleaners, Inc.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: I heard this case in trial at Kansas City, Kansas, on March 8 and 9, 1983. Pursuant to a charge filed against Ann's Laundry & Dry Cleaners, Inc. (the Respondent), on July 15, 1982, by Textile Processors, Service Trades, Health

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Chairman Dotson, in determining the legality of employer interrogations of employees, would apply the test set forth by the Second Circuit in *Bourne v. NLRB*, 332 F.2d 47 (1964). Having applied that standard here, Chairman Dotson agrees that the Respondent unlawfully interrogated its employees about their union activities.

¹ Unless otherwise stated, all dates hereafter refer to the year 1982.

Care, Professional and Technical Employees International Union Local No. 2, affiliated with International Brotherhood of Teamsters (the Union), the Regional Director for Region 17 of the National Labor Relations Board issued a complaint and notice of hearing on August 20, alleging in substance that the Respondent engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151 et seq., herein called the Act.

The Issues

The principal questions presented for decision are:

- 1. Whether the Respondent violated Section 8(a)(1) of the Act by interrogating employees concerning their union activities.
- 2. Whether the Respondent violated Section 8(a)(1) of the Act by threatening to close its business because of the advent of the Union.
- 3. Whether the Respondent violated Section 8(a)(1) and (3) of the Act by discharging its employee Anner Faye Miller on July 14.

All parties were given full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and the Respondent.

Based on the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

The Respondent is a Kansas corporation with an office and principal place of business located in Kansas City, Kansas, where it is engaged in the wholesale and retail laundry and dry cleaning business. In an unreported Decision and Certification of Representative, dated October 6, 1982, in Case 17-RC-9446, the Board found the Respondent to be an employer engaged in commerce within the meaning of the Act. Accordingly, in this case, the Respondent admits and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

On October 6, the Board certified the Union as the exclusive representative of all of the Respondent's employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment:

All full-time and regular part-time production employees employed by Ann's Laundry & Dry Cleaners, Inc., at its facility located at 2900 Brown, Kansas City, Kansas, but excluding drivers, office clerical employees, managerial employees, supervisors as defined in the Act, and all other employees.

Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On June 25, the Union filed a petition in Case 17-RC-9446 with the Board seeking to represent the Respondent's employees. A representation hearing was scheduled for July 13 which hearing was postponed to July 19. Thereafter the parties executed a Stipulation for Certification Upon Consent Election which stipulation was approved by the Acting Regional Director for Region 17 of the Board on July 27. An election by secret ballot was conducted on August 19, under the direction and supervision of the Regional Director. The challenged ballots were sufficient in number to affect the results of the election and, on August 24, the Employer filed timely objections to conduct affecting the election. Thereafter, on September 16, the Regional Director issued and served on the parties a Report on Challenged Ballots and Objections and Recommendations. The Regional Director recommended to the Board that the Union be certified as the exclusive bargaining representative of the Respondent's employees in the stipulated appropriate unit, described above. No exceptions to the Regional Director's report were filed by either party and, on October 6, the Board issued its Decision and Certification of Representative adopting the Regional Director's recommendations and certifying the Union as the exclusive bargaining representative of the Respondent's employees in the appropriate unit described above. The parties promptly commenced negotiations and reached an agreement by November 15, 1982.

Anner Faye Miller, who had been employed as a shirt presser by the Respondent since July 1980, signed an authorization card for the Union dated May 20.2 The record reveals that the Respondent's managerial staff became aware of the Union's organizational campaign "sometime in May." However, there is no evidence that the Respondent was aware of Miller's union sympathies until July. On or about July 12, Miller notified Anna Knoff, the Respondent's principal stockholder,³ that she had been subpoenaed by the Union to testify at the representation hearing then scheduled for July 13. Miller showed Knoff the subpoena, and Knoff said, "O.K." No further discussion about the subpoena or representation hearing took place. Although other employees were subpoenaed for July 13, only Miller made her subpoena known to Knoff. The other employees did not notify the

² While Miller's authorization card bears the date May 20, the card was apparently first dated June 20. Miller testified that she signed the card in June. The card was submitted by the Union to the Board along with the representation petition which was filed on June 25.

³ Anna Knoff died prior to the instant trial. The Respondent objected to any testimony regarding conversations Miller or any other employee had with Anna Knoff presumably on the grounds of the "dead man's" statute. The Board may consider as evidence statements of persons who are deceased, including testimony about such statements from parties having a direct legal interest in the proceeding. Hood Industries, 248 NLRB 597, 599 (1980); Calandra Photo, 151 NLRB 660, 669 fn. 23 (1965). However the Board will subject such testimony to the closest scrutiny before deciding what weight to give it. Calandra Photo, supra. The Calandra Photo guidelines have been followed herein. To the extent that the Respondent argues that statements by Anna Knoff are hearsay, that objection is also lacking in merit. Knoff's statements are admissions by a party opponent under Fed.R.Evid. 801(d)(2)(1) and by definition not hearsay.

Respondent of their subpoena until shortly before the actual hearing date of July 19.

Employee Patricia Jackson testified that, on or about July 1, she heard Anna Knoff tell employee Mary Williams that Knoff believed that employees Erie Lowery and Miller "started this mess about the Union" and "put the people on it." Knoff asked Williams whether she agreed and Williams answered that she did not know. According to Jackson, Knoff asked Williams to "find out." Williams, on the other hand, testified that Knoff simply said that Knoff "wished she could find out who brought [the Union] in."

I credit Jackson's testimony over that of Williams. Jackson appeared to be a credible witness. Further, from the fact that Jackson testified against her employer, I draw the inference that her testimony is not likely to be false. Williams, on the other hand, appeared most willing to tailor her testimony to aid her employer's case.

Employee Robert Lee testified that he informed Eugene Knoff, the Respondent's manager and the son of Anna Knoff, on July 19, of the subpoena given him by the Union for the representation hearing that same date. According to Lee, Eugene Knoff asked him whether the employee intended to participate in union activities if the Respondent became unionized. Eugene Knoff testified that he only asked Lee whether the employee was going to attend the representation hearing because Knoff needed someone to run the pants press. Knoff denied asking Lee any question about participation in the Union. Lee impressed me as a more credible witness than Knoff. Knoff appeared more intent on denying any wrongdoing than in testifying to objective facts.

Shortly after the representation election of August 15, according to employee Erie Lowery, Anna Knoff asked Lowery whether Lowery knew anything about the Union and if Lowery knew who was behind the Union. Knoff said that she was "not going to let no union come in and tell her how to run her place. She would close down."

Also shortly after the election, according to employee Alice Williams, Georgia Mullins, an employee, told Knoff that Mullins could not read and had mistakenly voted for the Union when she had intended to vote against it. Knoff then asked Williams and another employee how the employees had voted in the election. Soon after this conversation, the Respondent filed objections to the conduct of the election based, inter alia, on the ground that Mullins had incorrectly marked her ballot.

As mentioned earlier, on July 12, Miller showed Anna Knoff the subpoena for the representation hearing. When Miller arrived home that evening, she learned that her small son was ill. Miller called her physician and made an appointment to have her son examined. Miller then called Knoff and explained that she could not be at work in the morning because she would be taking her son to the doctor. Knoff told Miller that it was "O.K." The following day, Miller called Knoff, at noon, and told Knoff that she was still at the doctor's office and would, therefore, not be in to work that day. When Miller reported

for work the next day, July 14, she found that her timecard was not in the rack near the timeclock. Miller went to Knoff's office where Knoff immediately handed the employee a paycheck and said, "Anner Faye, I don't need you anymore." Miller asked why she was being terminated and Knoff answered that Miller had been "laying off too many days." Miller asked how many days Knoff was referring to and Knoff answered that she did not have the figure but Knoff would find out from the books kept by the Respondent's bookkeeper. Miller called Knoff the next day, July 15, and Knoff told Miller that the employee had missed 53 days. The 53 days of absence involved the time period from July 18, 1981, until the termination. A termination letter containing the dates of the absences was prepared sometime after Miller's termination. Miller was never given a copy of the termination letter.

A. Respondent's Defense

The Respondent asserts that Miller was discharged due to "excessive absenteeism and lateness for work." Bernadine Debrick, the Respondent's office manager and the daughter of Anna Knoff, testified that while employees were expected to work 8 hours per day, 5 days a week, there was no specific rule pertaining to absences or tardiness. Debrick testified that Miller was discharged by Anna Knoff and that Debrick took no part in the discharge. According to Debrick, she witnessed Knoff twice warn Miller about Miller's work but not about her absences. Although Debrick began taking notice of Miller's attendance record in May, Debrick never spoke to the employee about her attendance record.

Eugene Knoff, the Respondent's manager and the son of Anna Knoff, testified that he often spoke to his mother concerning Miller's absences and tardiness. Eugene testified that his mother was "put out with it." However, Eugene Knoff did not speak with Miller concerning her absences or tardiness nor did he have any knowledge of any action taken by his mother to correct Miller's attendance record. Patricia Johnson, an employee, testified that when Miller was tardy, which was quite often, Johnson operated Miller's machine until Miller arrived. Johnson, on many occasions, heard Anna Knoff ask Miller why Miller had not come to work or had not called in. However, Johnson never heard Miller's responses. Most importantly, Johnson never heard Knoff warn Miller about her absences or tardiness.

Mary Williams testified that Knoff warned Miller several times about Miller's absences and tardiness. Williams testified that she heard such warnings in May. On cross-examination, Williams testified that such warnings were

⁴ Knoff told Bernadine Debrick, her daughter and office manager, that Miller's child had called in for Miller and that Miller was discharged as

of that date. Debrick marked the Respondent's payroll records in accordance with Knoff's instructions.

⁸ Although some of the Respondent's witnesses made reference to Miller's poor attitude toward Anna Knoff, there is no evidence that the alleged poor attitude contributed to the discharge. Knoff alone decided to discharge Miller and made no mention of Miller's poor attitude in the termination letter. Moreover, "poor attitude" was not mentioned to Miller at the time of discharge or at any time prior to the discharge.

⁶ Debrick never explained what prompted her, in May, to begin making notations about Miller's absences in the Respondent's payroll

given weekly during the entire period of Miller's employment with the Respondent. Miller denied ever receiving such warnings. As mentioned earlier, Williams was quite willing to color her testimony in order to aid the Respondent's case. Further, if Knoff had warned Miller as Williams testified there surely would have been other witnesses. However, no other witness had any knowledge of such warnings. Thus, I do not credit Williams' testimony on this point.

Scrutiny of the Respondent's payroll records reveals that, during the period of May through July 1982, several employees had poor attendance records, including two employees who had more absences than Miller. There is no evidence that any adverse action was taken against these employees because of their attendance records. Miller's attendance record was also poor during the same period in 1981. However, Miller's record was worse in 1982. Similarly, with regard to tardiness, while Miller was consistently tardy, many other employees had the same problem. There is no evidence that any action was taken against these other employees because of tardiness. The Respondent sought to explain this disparity by offering evidence that because of Miller's job assignment her tardiness caused more inconvenience than the tardiness of other employees. While Miller's tardiness did cause another employee (Patricia Johnson) to leave her own position to cover for Miller, the Respondent took no action to reassign Miller or otherwise minimize the problem caused by her attendance record. Miller's problems with tardiness were not recent but apparently had occurred throughout her employment with the Respondent.

B. Conclusions Regarding 8(a)(1) Issues

- 1. As found earlier, in early July, Anna Knoff asked Mary Williams whether Miller and Lowery had started this "mess about the Union" and when Williams answered that she did not know, Knoff asked Williams to find out. By questioning Williams concerning the identity of the union organizers and instructing Williams to obtain such information, the Respondent violated Section 8(a)(1) of the Act. It is no defense to such conduct that Williams did not give the requested information to Knoff. Knoff's conduct still created the impression that the Respondent would take some adverse action against the employees responsible for the union activities at its facility. See NLRB v. Los Angeles New Hospital, 640 F.2d 1017, 1020 (9th Cir. 1981).
- 2. On July 19, Eugene Knoff asked Robert Lee whether Lee intended to participate in union activities if the facility became unionized. The questioning of Lee went beyond Knoff's legitimate need to know whether Lee would be absent from work due to the representation hearing. Knoff's inquiry into Lee's intended participation in union activities violates Section 8(a)(1) because it implies that the Respondent was keeping track of its employees' union activities and/or that the Respondent looked unfavorably on such activities.
- 3. During August, shortly after the election, Anna Knoff questioned two employees regarding their secret ballots in the recently conducted Board election. Although apparently concerned that the employees might have mistakenly marked their ballots, as had Georgia

Mullins, Knoff did not limit her inquiry as to whether the employees correctly marked their ballots. Rather, without any assurances that no reprisals would be taken against the employees, Knoff asked the employees to reveal whether they voted for or against representation by the Union. Accordingly, I find that the Respondent interrogated the employees in violation of Section 8(a)(1) and that such conduct was not justified by the Respondent's concern over the conduct of the election. See, e.g., Hedison Mfg. Co., 260 NLRB 1037 (1982); CNA Financial Corp., 264 NLRB 619 (1982).

4. Shortly after the election, Anna Knoff questioned Erie Lowery about the Union and told Lowery that she was not going to let the Union tell her how to run her business and that she would "close down." Even if Knoff's threat to close was contingent on the Union's attempting to "tell her how to run her place," as argued by the Respondent, the threat would not be privileged. The Board and the courts here recognized the right of an employer to make a prediction as to the precise effect she believes unionization will have on her company. However, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond her control.7 In this case, an attempt by the Union to tell Knoff how to run her business was not demonstrably probable nor a reasonable prediction as to the effects of unionization. Accordingly, I find Knoff's remarks to constitute an unlawful threat to close her business in order to discourage union activities.

C. Conclusions Regarding the Discharge of Miller

In Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1981), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.8

It is well settled that if an employer discharges an employee involved in "unwelcome concerted activities" for behavior that would warrant a discharge in the absence of union or concerted activities then "the circumstance that the employer welcomed the opportunity to discharge does not make it discriminatory and therefore unlawful." Klate Holt Co., 161 NLRB 1606, 1612 (1966). However, it is equally well established that the existence of a justifiable ground for dismissal is no defense if it is a

⁷ See, e.g., NLRB v. Gissell Packing Co., 395 U.S. 575, 618 (1969); Bacchus Wine Cooperative, 251 NLRB 1552, 1559 (1980).

⁸ In enforcing the Board's Wright Line decision, the United States Court of Appeals for the First Circuit stated that the burden on the employer is the "burden of production," which requires the employer to come forward with credible evidence to rebut or meet the General Counsel's prima facie case, rather than the "burden of persuasion." The United States Supreme Court recently granted certiorari in a case that squarely presents the burden shifting issue. See NLRB v. Transportation Management Corp., cert. granted 103 S.Ct. 372 (1982).

pretext used to mask an unlawful motive. General Thermo, 250 NLRB 1260 (1980).9

For the following reasons I find that the General Counsel has made a prima facie showing that the Respondent was motivated by a desire to discourage membership in the Union. First, Miller's absence on July 13, the alleged triggering event for the discharge, was excused. Miller called Anna Knoff on July 12 and again on July 13, first to tell Knoff of the doctor's appointment and later to tell Knoff that she would not be in until the next day. Anna Knoff did not inform Debrick that Miller's absence was excused and later gave Debrick false information regarding Miller's telephone call. Knoff's falsification of this event supports an inference that the Respondent had an unlawful motive for the discharge. See e.g., Keller Mfg. Co., 237 NLRB 712, 716 (1978); Party Cookies, 237 NLRB 612, 623 (1978). The timing of the discharge is an important factor in determining whether the Respondent was motivated by its employees' union activities. In this case, Miller was discharged the day after revealing to Anna Knoff that she was intending to appear on behalf of the Union at the representation hearing. Further, just prior to hearing of Miller's subpoena from the Union, Knoff had attempted to find out whether Lowery and Miller had started this "mess about the Union." Prior to these events, Knoff had been tolerant of Miller's absences and tardiness. Shortly after Miller's discharge, Knoff unlawfully interrogated Lowery concerning union activities and unlawfully threatened to close the facility. An inference can be drawn from such antiunion conduct that the Respondent was similarly motivated in its discharge of Miller.

The burden shifts to the Respondent to establish that Miller would have been discharged even in the absence of her protected conduct. As shown above, Miller had an attendance record which would normally justify discharge. However, the issue is whether the Respondent in fact relied on that ground or merely advanced it as a pretext for an action it was undertaking essentially for discriminatory reasons, such as the employee's status as a union supporter. Limestone Apparel Corp., 255 NLRB 722 (1981). In this case the Respondent historically tolerated absences and tardiness from its employees, including Miller. The Respondent made no distinctions in its records between excused and unexcused absences or tardiness. No warnings were given or adverse actions taken against employees for either absences or tardiness. Neither Eugene Knoff nor Bernadine Debrick ever warned Miller nor did they have any knowledge of any warning given by Anna Knoff. Although Miller's tardiness inconvenienced Eugene and Anna Knoff, neither took any steps to reassign or discipline Miller. Thus, based on the record as a whole, including the evidence offered by the Respondent in its defense, I am convinced that Miller's absences and tardiness were not in fact the reason for the discharge. Rather, I find that the record of absences and tardiness were seized on to justify the discharge because of Miller's unwelcomed support of the Union. While I do not condone Miller's attendance record, I find that the Respondent condoned that record until it obtained Accordingly, I find that the Respondent discharged Miller because of her support for the Union and that under either the Board's Wright Line test or that of the First Circuit, a violation of Section 8(a)(3) and (1) of the Act has been proven by a preponderance of the evidence.

CONCLUSIONS OF LAW

- 1. The Respondent, Ann's Laundry & Dry Cleaners, Inc., is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. The Union, Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union Local No. 2, affiliated with International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. The Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by unlawfully interrogating employees about union activities and by unlawfully threatening to close its facility due to union activities.
- 4. The Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act by unlawfully discharging Anner Faye Miller on July 14, 1982
- 5. The unfair labor practices found above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

The Respondent shall be required to offer Anner Faye Miller reinstatement to her former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges and to make her whole for any losses she may have suffered as a result of the discrimination against her in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Heating Co.*, 138 NLRB 716 (1962).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

knowledge of Miller's support of the Union. Similarly, absences and tardiness of undischarged employees were condoned by the Respondent. Finally, I am not impressed by the Respondent's argument that no action was taken against Lowery, a more active union supporter. A discriminatory motive otherwise established is not disproved by an employer's proof that it did not weed out all union adherents. American Petrofina Co. of Texas, 247 NLRB 183, 193 (1980); Nachman Corp. v. NLRB, 337 F.2d 421, 424 (7th Cir. 1964).

⁹ Enf. denied on other grounds 664 F.2d 195 (8th Cir. 1981).

ORDER10

The Respondent, Ann's Laundry & Dry Cleaners, Inc., Kansas City, Kansas, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discharging or otherwise discriminating against employees for supporting or engaging in activities on behalf of Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union No. 2, affiliated with International Brotherhood of Teamsters, or any other labor organization.
- (b) Interrogating employees about their union activities or the union activities of other employees.
- (c) Threatening to close its facility because of its employees' union activities.
- (d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.
- 2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.
- (a) Offer Anner Faye Miller full and immediate reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, with full seniority, privileges, and benefits, and make her whole for any losses she may have suffered because of the discrimination against her in accordance with the
- 10 All outstanding motions inconsistent with this recommended Order hereby are denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- provisions set forth in the section of this Decision entitled "The Remedy."
- (b) Expunge from its files any reference to the discharge of Miller in July 1982, and notify her in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against her.
- (c) Post at its Kansas City, Kansas facility copies of the attached notice marked "Appendix." Copies of said notice on forms provided by the Regional Director for Region 17, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.
- (d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right of reinstatement under the terms of this Order.
- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹¹ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."